

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

GUILLERMO TRUJILLO CRUZ,
Plaintiff,
v.
SANTORO, *et al.*,
Defendants.

No. 1:20-cv-01038-NONE-BAM (PC)

ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS RECOMMENDING
DENIAL OF PLAINTIFF'S MOTION TO
PROCEED *IN FORMA PAUPERIS*

(Doc. Nos. 7, 8)

TWENTY-ONE (21) DAY DEADLINE

Plaintiff Guillermo Trujillo Cruz is a state prisoner proceeding *pro se* in this civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff initiated this action on July 27, 2020. (Doc. No. 1.) On August 14, 2020, plaintiff filed a motion to proceed *in forma pauperis* together with a certified copy of his inmate trust account statement. (Doc. No. 7.)

On August 17, 2020, the assigned magistrate judge issued findings and recommendations that plaintiff's application to proceed *in forma pauperis* be denied and that plaintiff be required to pay the \$400.00 filing fee in full to proceed with this action because he is subject to the three strikes bar pursuant to 28 U.S.C. § 1915(g) and because the allegations of his complaint do not satisfy the "imminent danger of serious physical injury" exception to § 1915(g). (Doc. No. 8.) Those findings and recommendations were served on plaintiff and contained notice that any objections thereto were to be filed within fourteen (14) days after service. (*Id.* at 3.) Following an extension of time, plaintiff filed a second motion to proceed *in forma pauperis* on August 26,

2020, (Doc. No. 11) and objections to the pending findings and recommendations on September 2, 2020, (Doc. No. 12).

As discussed in the findings and recommendations, the allegations of plaintiff's complaint arise out of injuries plaintiff suffered while housed at North Kern State Prison, and his claims in this action are brought against employees of North Kern State Prison. However, at the time the complaint was filed, plaintiff was housed at Pelican Bay State Prison. Plaintiff's objections do not address this issue regarding how he was in "imminent danger of serious physical injury" when his complaint was filed if he was then incarcerated at a different prison. Instead, plaintiff merely re-allege his underlying claims regarding the actions allegedly taken by staff at North Kern State Prison.

In accordance with the provisions of 28 U.S.C. § 636 (b)(1)(C), this court has conducted a *de novo* review of the case. Having carefully reviewed the entire file, including plaintiff's objections, the court concludes that the magistrate judge's findings and recommendations are supported by the record and proper analysis.

Accordingly,

1. The findings and recommendations issued on August 17, 2020, (Doc. No. 8), are adopted in full;
2. In accordance with 28 U.S.C. § 1915(g), plaintiff's applications to proceed *in forma pauperis* (Doc. Nos. 7, 11) are denied; and
3. Within **twenty-one (21) days** following the date of service of this order, plaintiff shall pay the \$400.00 filing fee in full to proceed with this action. If plaintiff fails to pay the filing fee within the specified time, this action will be dismissed without further notice.

IT IS SO ORDERED.

Dated: September 20, 2020


UNITED STATES DISTRICT JUDGE